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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

(1) UNITHERM FOOD SYSTEMS, INC., an Illinois corporation; and	)	Case No. CIV 01-347-C
(2) JENNIE-O-FOODS, INC., a	)	
Minnesota corporation,	)	<b>DEFENDANT'S RESPONSES TO</b>
Plaintiffs.	)	<b>PLAINTIFFS' FIRST SET OF</b>
vs.	)	<b>INTERROGATORIES</b>
	)	
(1) SWIFT-ECKRICH, INC. d.b.a	)	
CONAGRA REFRIGERATED	)	
FOODS, a Delaware corporation,	)	
Defendant.	)	
	)	
	)	

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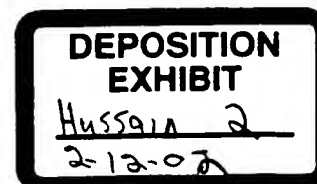
OCT - 4 2001

**F.S.B.B.&T.**

Defendant Swift-Eckrich d.b.a. Conagra Refrigerated Foods responds as follows to the First Set of Interrogatories propounded to it by Plaintiffs Unitherm Food Systems, Inc. and Jennie-O-Foods, Inc.:

**DEFINITIONS**

1. "CONAGRA" refers to defendant Swift-Eckrich, Inc. d.b.a. Conagra Refrigerated Foods.
2. "UNITHERM" refers to plaintiff Unitherm Food Systems, Inc.
3. "JENNIE-O" refers to plaintiff Jennie-O-Foods, Inc.
4. "PLAINTIFFS" refer collectively to UNITHERM and JENNIE-O.
5. An objection on the ground that an Interrogatory is "NOT RELEVANT" is an objection that the information, documents or things sought by the Interrogatory are neither



relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

6. An objection on the ground that an Interrogatory is "UNDULY BURDENSOME" is an objection that it is unjustly burdensome and oppressive, harassing in nature and/or would require CONAGRA to incur an undue expenditure of time and money to answer the Interrogatory and/or to search for, locate and produce any responsive document or things.

7. An objection that an Interrogatory is "OVERLY BROAD" is an objection that it is overly broad and not properly limited in time and/or scope.

8. An objection on the ground that an interrogatory is "VAGUE" is an objection that the Interrogatory is vague, ambiguous, uncertain, argumentative, unintelligible and/or indefinite.

9. An objection on the ground of "ATTORNEY-CLIENT AND/OR WORK PRODUCT PRIVILEGE" is an objection that the Interrogatory seeks information which is privileged under the attorney-client privilege and/or is protected from disclosure under the work product doctrine.

10. An objection that an Interrogatory is "SPECULATIVE" is an objection that the question improperly requires CONAGRA to guess or speculate in order to frame an answer.

11. An objection on the ground of "TRADE SECRET" is an objection that the question seeks information which is proprietary and confidential in nature, such that its disclosure would adversely impact the business interests and/or competitive position of CONAGRA.

## GENERAL OBJECTIONS AND LIMITATIONS

In addition to those grounds for objection which may be set forth specifically in response to particular Interrogatories, CONAGRA objects generally to each Interrogatory on the following grounds; and each of its individual responses incorporates, and is to be read in light of these General Objections and Limitations:

1. CONAGRA has not completed its investigation or discovery relating to this case, and has not completed its preparation for trial; and the following responses, subject to inadvertent or undiscovered errors, are based upon and necessarily limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparing these responses. Consequently, CONAGRA reserves the right to produce and to refer to at trial or at any other hearing any evidence, facts, documents or information not yet discovered, or the relevance of which has not yet been determined, by CONAGRA or its counsel.

2. CONAGRA objects to each interrogatory because PLAINTIFFS' First Set of Interrogatories is in violation of Rule 33 of the Federal Rules of Civil Procedure and Local Rule LCvR33.1 in that more than 25 interrogatories, including all discrete subparts and subdivisions of one numbered interrogatory, have been propounded.

### INTERROGATORY NO. 1:

With respect to the '027 Patent state:

- (a) the earliest dates of conception of any and all of the subject matter claimed therein

### RESPONSE TO INTERROGATORY NO. 1 (PROPOUNDED AS INTERROGATORY NO. 1(a)):

Between February 1989 and December 1990

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**INTERROGATORY NO. 1:**

With respect to the '027 Patent state:

- (b) the earliest dates of actual reduction to practice in this country of said  
claimed subject matter

**RESPONSE TO INTERROGATORY NO. 2 (PROPOUNDED AS INTERROGATORY  
NO. 1(b)):**

Between February 1989 and December 1990

**INTERROGATORY NO. 1:**

With respect to the '027 Patent state:

- (c) the earliest dates when tests corresponding to the claimed subject matter  
were made or conducted

**RESPONSE TO INTERROGATORY NO. 3 (PROPOUNDED AS INTERROGATORY  
NO. 1(c)):**

Between February 1989 and December 1990

**INTERROGATORY NO. 1:**

With respect to the '027 Patent state:

- (d) identify all persons having knowledge of the events set forth in parts  
(a) through (c) of this Interrogatory, giving name and present address

**RESPONSE TO INTERROGATORY NO. 4 (PROPOUNDED AS INTERROGATORY  
NO. 1(d)):**

Syed Hussain, CONAGRA

Chris Salm, CONAGRA

John Shoop, Red Arrow

Prem Singh, CONAGRA

Pie-Yi Wang, CONAGRA

**INTERROGATORY NO. 1:**

With respect to the '027 Patent state:

- (e) identify all documents supportive of your answer to parts (a) through (c) of this Interrogatory.

**RESPONSE TO INTERROGATORY NO. 5 (PROPOUNDED AS INTERROGATORY NO. 1(e)):**

All relevant documents have been produced by CONAGRA to PLAINTIFFS

**INTERROGATORY NO. 2:**

List, date, and describe any and all activities and actions taken, or preparations made, between said dates of conception provided in your response to Interrogatory No. 1 and the filing of U.S. Patent Application Serial No. 09/075,608, relating to the filing of any patent application for, the disclosure or demonstration of, the improvement or refinement of, the testing of, the commercial use of, or the sale of product produced using any of the subject matter disclosed or claimed in the '027 Patent.

**RESPONSE TO INTERROGATORY NOS. 6 - 11 (PROPOUNDED AS INTERROGATORY NO. 2):**

Objection: UNDULY BURDENSOME; OVERBROAD; VAGUE;  
ATTORNEY-CLIENT AND/OR WORK PRODUCT PRIVILEGE

Notwithstanding this objection, CONAGRA responds as follows: Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, the answer to these interrogatory questions may be derived or ascertained from the business records produced by CONAGRA to plaintiffs.

In general, tests were run after conception at CONAGRA's pilot plant in a continuous manner. Maillose was tested further in 1993 through the Enercyst oven at CONAGRA's Wells, Minnesota facility. Later in 1993, tests were run on UNITHERM's RapidFlow oven at Elk Grove Village, Illinois. Further tests were performed at CONAGRA's Wells, Minnesota facility. Equipment tests were performed in 1995 and 1996 at CONAGRA's Downers Grove, Illinois facility using a UNITHERM oven to test the physical and hardware capabilities of that oven. In 1997 and 1998, CONAGRA tested various ovens produced by Stein, Inc.; Convenience Food Systems, Inc.; Heat & Control, Inc.; and, UNITHERM.

**INTERROGATORY NO. 3:**

Describe the content and scope of each reduction to practice identified in your response to Interrogatory No. 1, including, but not limited to, the products tested, the type and amounts of browning and flavoring agents used, processing times, processing temperatures, product yields or shrinkage levels achieved, internal product core temperatures (before and after), procedures used for pre-drying the product, and the surface colors and other results obtained.

**RESPONSE TO INTERROGATORY NOS. 12 - 19 (PROPOUNDED AS**

**INTERROGATORY NO. 3):**

In the reduction to practice (which can occur only once), whole muscle turkey breasts, which had been pre-cooked, pre-chilled, stripped and washed were placed in a high temperature Enercyst High Velocity Oven at 460 - 600 degrees Fahrenheit for about 30 - 60 seconds, then dipped in continuously circulating and filtered liquid smoke from Red Arrow and

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placed in another high temperature Enercyst High Velocity Oven at 460 - 600 degrees Farenheit for another 30 - 60 seconds resulting in a smoked color. There was no more than a 1% to 3% shrinkage level and the internal product core temperature changed less than 1 degree Farenheit. The product was chilled using an in-line Enercyst impingement chiller such that the product temperature, measured anywhere in the whole muscle turkey breast, was less than 40 degrees Farenheit.

**INTERROGATORY NO. 4:**

Has any novelty, patentability, validity, infringement or state of the art search or investigation ever been conducted by or on behalf of you or Prem Singh relating to the subject matter of the '027 Patent? . . . .

**RESPONSE TO INTERROGATORY NO. 20 (PROPOUNDED AS INTERROGATORY NO. 4):**

Yes

**INTERROGATORY NO. 4:**

. . . . If affirmative,

- (a) state the date and place of said search including field of search by class and subclass, etc.

**RESPONSE TO INTERROGATORY NO. 21 (PROPOUNDED AS INTERROGATORY NO. 4(a)):**

Spring 1998

**INTERROGATORY NO. 4:**

. . . . If affirmative,



- (b) identify all prior art documents and other materials located or noted as a result of said search

**RESPONSE TO INTERROGATORY NO. 22 (PROPOUNDED AS INTERROGATORY**

**NO. 4(b)):**

U.S. Patent Nos. 3,106,473; 4,876,108; 4,994,297; 5,039,537; 5,292,541; and 5,397,582.

**INTERROGATORY NO. 4:**

.... If affirmative,

- (c) identify the person(s) making, authorizing and requesting such search.

**RESPONSE TO INTERROGATORY NO. 23 (PROPOUNDED AS INTERROGATORY**

**NO. 4(c)):**

Prem Singh

**INTERROGATORY NO. 5:**

Identify by name and address of licensee or prospective licensee each person Defendant has granted or offered a license under the '027 Patent?

**RESPONSE TO INTERROGATORY NO. 24 (PROPOUNDED AS INTERROGATORY**

**NO. 5):**

1. Willowbrook Foods  
405 N. Jefferson Avenue  
Springfield, MO 65806
2. Sara Lee Corporation  
3 First National Plaza  
Chicago, IL 60602

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3. Carolina Turkey Co.  
P.O. Box 589  
Mount Olive, NC 28365
4. Foster Farms, Inc.  
P.O. Box 457  
Livingston, CA 95334
5. House of Raeford Farms, Inc.  
520 E. Central Avenue  
Raeford, NC 28736-3020
6. Jennie-O Foods, Inc.  
2505 Willmar Ave., SW  
Willmar, MN 56201-2711
7. Sunday House Foods, Inc.  
2523 Heather Path  
San Antonio, TX 78232
8. Scan America  
9505 N. Congress Avenue  
Kansas City, MO 64153
9. Convenience Food Systems  
91 Wales Avenue  
P.O. Box 358  
Avon, MA 02322-0358

10. Heat & Control, Inc.  
21121 Cabot Blvd.  
Hayward, CA 94545-1132

INTERROGATORY NO. 6:

State whether Defendant or its licensees have used or are presently using any process or have engaged or are engaging in any other activity upon which at least one claim of the '027 Patent reads . . .

RESPONSE TO INTERROGATORY NO. 25 (PROPOUNDED AS INTERROGATORY NO. 6):

Yes

INTERROGATORY NO. 6:

. . . and if so,

(a) state the dates on which such uses or activities began

RESPONSE TO INTERROGATORY NO. 26 (PROPOUNDED AS INTERROGATORY NO. 6(a)):

December 1998

INTERROGATORY NO. 6:

. . . and if so,

(b) identify all products which have been or are being produced by or for Defendant or its Licensees by such process or activity

RESPONSE TO INTERROGATORY NO. 27 (PROPOUNDED AS INTERROGATORY NO. 6(b)):

Golden Brown Deli Turkey Breast and Smoked Deli Turkey Breast

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**INTERROGATORY NO. 6:**

... and if so,

- (c) state the amount in terms of quantity of each such product produced in the United States by you or your licensees and the amount of each such product sold in the United States by you or your licensees in terms of quantity and dollars before the issuance of the '027 Patent and then after the issuance of the '027 Patent on September 14, 1999.

**RESPONSE TO INTERROGATORY NO. 28 (PROPOUNDED AS INTERROGATORY NO. 6(c)):**

Objection: TRADE SECRET

**INTERROGATORY NO. 7:**

State whether prior to the filing of Plaintiffs' Complaint, Defendant or any of its employees ever discussed or communicated any of the subject matter disclosed in the '027 Patent with any person or entity; if so, give (1) the name of the person or entity with whom the discussions or communications took place; (2) the dates thereof.

**RESPONSE TO INTERROGATORY NO. 29 - 31 (PROPOUNDED AS INTERROGATORY NO. 7):**

Objection: UNDULY BURDENSOME; OVERLY BROAD; VAGUE;  
ATTORNEY-CLIENT AND/OR WORK PRODUCT PRIVILEGE

Notwithstanding this objection, CONAGRA responds as follows: CONAGRA discussed some of the subject matter disclosed in the '027 Patent with a number of different entities, including, but not limited to UNITHERM (late 1995); Stein, Inc. (late 1997 - 1998); Convenience Food Systems (Koppens, Inc.) (late 1997 - 1998); Rosenthal Associates (late 1997 -

1998); Heat & Control, Inc. (late 1997 - 1998); Red Arrow (1990); Proctor & Schwartz (1994); and, Pretty, Schroeder & Poplawski.

CONAGRA further objects on ATTORNEY-CLIENT AND/OR WORK PRODUCT PRIVILEGE insofar as this interrogatory requests additional information concerning communications between CONAGRA and its counsel.

**INTERROGATORY NO. 8:**

Identify each person Defendant has charged with infringement of the '027 Patent or given notice of the '027 Patent by letter.

**RESPONSE TO INTERROGATORY NOS. 32 - 33 (PROPOUNDED AS INTERROGATORY NO. 8):**

CONAGRA has not charged any person with infringement of the '027 Patent.

CONAGRA has given notice of the '027 Patent by letter to the following entities:

1. Willowbrook Foods  
405 N. Jefferson Avenue  
Springfield, MO 65806
2. Sara Lee Corporation  
3 First National Plaza  
Chicago, IL 60602
3. Carolina Turkey Co.  
P.O. Box 589  
Mount Olive, NC 28365

4. Foster Farms, Inc.  
P.O. Box 457  
Livingston, CA 95334
5. House of Raeford Farms, Inc.  
520 E. Central Avenue  
Raeford, NC 28736-3020
6. Jennie-O Foods, Inc.  
2505 Willmar Ave., SW  
Willmar, MN 56201-2711
7. Sunday House Foods, Inc.  
2523 Heather Path  
San Antonio, TX 78232
8. Scan America  
9505 N. Congress Avenue  
Kansas City, MO 64153
9. Convenience Food Systems  
91 Wales Avenue  
P.O. Box 358  
Avon, MA 02322-0358
10. Heat & Control, Inc.  
21121 Cabot Blvd.  
Hayward, CA 94545-1132

**INTERROGATORY NO. 9:**

Identify all browned or smoked products produced and/or sold in the United States by you or any of your affiliates since said earliest date of conception identified in your response to Interrogatory No. 1 which you contend were not and are not produced by a process upon which any claim of the '027 Patent reads and as to each such product


- (a) identify each step, feature, characteristic, or element, if any, of the actual process used upon which you intend to rely as a point of material difference from the process disclosed in the '027 patent and
- (b) identify and describe each and every step, feature, limitation, element, component, or aspect, if any, of each of the claims of the '027 Patent which you contend is omitted from the actual process used and upon which you intend to rely as a point of material difference.

**RESPONSE TO INTERROGATORY NOS. 34 - 36 (PROPOUNDED AS  
INTERROGATORY NO. 9):**

Objection: NOT RELEVANT, UNDULY BURDENSOME; OVERLY BROAD

Dated: September 28, 2001

Respectfully submitted,

By   
Howard A. Kroll

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350 West Colorado Blvd., Suite 500  
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Pasadena, California 91109-7068  
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Attorneys for Defendants

PTO-002359

OF COUNSEL:

Robert D. Tomlinson OBA# 9056

McKINNEY & STRINGER, P.C.

101 North Robinson, Suite 1300

Oklahoma City, Oklahoma 73102

Tel: (405) 239-6444

Fax: (405) 239-7902

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## VERIFICATION

I, Christopher Salm, declare as follows:

I am Vice President of Swift-Eckrich d.b.a. Conagra Refrigerated Foods, a defendant in the within action, and I have been authorized by it to make this verification for and on its behalf.

I have read the attached document entitled DEFENDANT'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, and am familiar with the contents thereof. These responses were prepared with the assistance and advice of employees of, and counsel for, said defendant, upon whose assistance and advice I have relied. These responses, subject to inadvertent and undiscovered error, are based on and therefore necessarily limited by the records and information still in existence, presently recollected, and thus far discovered in the course of preparation of these responses. Subject to these limitations, the responses are true and correct to the best of my knowledge, information and belief.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 28<sup>th</sup> day of September, 2001, at  
Downers Grove, Illinois.



## CERTIFICATE OF SERVICE

I certify that on October 3, 2001, a true and correct copy of the foregoing document described as **DEFENDANT'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES** was served on the parties in this action by Federal Express addressed as follows:

Burck Bailey  
Greg A. Castro  
Fellers, Snider, Blankenship, Bailey & Tippens  
100 North Broadway, Suite 1700  
Oklahoma City, Oklahoma 73102-8820

Dennis D. Brown  
Fellers, Snider, Blankenship, Bailey & Tippens  
321 South Boston, Suite 800  
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Colleen Severino

CPS PAS356033.1-10/3/01 1:41 PM